

## Maritime Administration, DOT

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provide information at the time of publication of Notice of Application described in § 249.7(b) concerning the existence of any discriminatory laws or practices in the marine hull insurance market abroad. Upon receipt of such information, MARAD will take whatever action it deems appropriate.

### § 249.11 Confidentiality.

(a) If the data submitted under this rule contain information that the submitter considers to be commercial or financial information and privileged or confidential, or otherwise exempt from disclosure under the Freedom of Information Act (FOIA) (5 U.S.C. 552), the submitter shall assert a claim of exemption at the time the data are submitted. The claim shall be made in a letter contained in a sealed enveloped marked "Confidential Information," addressed to the Secretary, Maritime Administration. The submitter shall stamp or mark "confidential" on the top of each page containing information claimed to be confidential.

(b) In claiming an exemption under FOIA, the submitter must state the basis for such action, including supporting information showing: (1) That the information claimed to be confidential is a trade secret or commercial or financial information in accordance with statutory and decisional authority; and (2) that measures have been taken by the submitter of the information to ensure that the information has not been disclosed or otherwise made available to the public, or, if the information has been disclosed or otherwise becomes available to the public, why such disclosure or availability does not compromise the confidential nature of the information.

(c) In the event of a subsequent request for any portion of the data under the FOIA, those submissions not so claimed by the submitter will be disclosed, and those so claimed will be subject to the initial determination by the Secretary, Maritime Administration.

(d) If the Secretary makes a determination unfavorable to the submitter, the submitter will be advised that MARAD will not honor the request for confidentiality at the time of any re-

quest for production of information under the FOIA by third parties.

### § 249.12 Waivers.

The provision of this part may be waived in writing, for special circumstances and good cause shown, provided the procedures adopted are consistent with the Act and with the intent of these regulations.

## PART 251—APPLICATION FOR SUBSIDIES AND OTHER DIRECT FINANCIAL AID

Sec.

251.1 Applications for construction-differential subsidy under Title V, Merchant Marine Act, 1936, as amended.

251.11 Applications under Title VI, Merchant Marine Act, 1936, as amended.

251.21 Applications under sections 803, 804, 805 (a) and (d), and 605(b), Merchant Marine Act, 1936.

251.31 Charges for processing applications for authorization to transfer ownership of ships built with construction-differential subsidy.

AUTHORITY: Sec. 204, 49 Stat. 1987, as amended; 46 U.S.C. 1114.

### § 251.1 Applications for construction-differential subsidy under Title V, Merchant Marine Act, 1936, as amended.

(a) Applications under section 501 of the Act for subsidy to aid in the construction of new vessels or the reconstruction of existing vessels, to be operated in the foreign commerce of the United States, shall be filed on form FMB-8 in accordance with the instructions annexed thereto.<sup>1</sup>

(b) Applications for aid in the construction of new vessels to be operated in domestic trade shall be filed on Form VA-9 in accordance with the instructions annexed thereto.<sup>1</sup>

#### APPENDIX No. 1—POLICY

1. To the maximum practical extent as determined by the Maritime Subsidy Board applicants for construction-differential subsidy (CDS) under Title V of the Merchant Marine Act of 1936, as amended, shall duplicate designs of ships previously approved by the Board for Subsidized Ship Construction.

<sup>1</sup>Copies of forms referred to may be obtained on request from the Secretary, Maritime Subsidy Board, Washington, D.C.

Such duplication contemplates retention of: Hull form; major structure, i.e., shell, transverse bulkheads, decks, girder systems; etc.; machinery horsepower and arrangement; and arrangement of deck house. However the Board will permit modifications such as changes to reefer cargo capacity, deep tankage, and cargo gear in a manner so as not to disrupt the basic configuration of the ship and without sacrificing gains that can be made from group production. New ship designs will be considered from any operator who has already constructed sufficient ships of a given design to have optimized the economy of standardized ship construction, when the applicant feels that a new design is necessary in exceptional cases and justifies this need to the Board. Where the Board concludes contrary to an applicant that a previously developed design can be satisfactorily adapted to requirements of the intended service at a substantial saving compared with building to a new design, invitations to bid shall be issued for both the standard design and the custom design of the owner's preference. Construction-differential subsidy will be based on whichever design requires the least subsidy.

2. The Board may require such variations from designs of ships previously approved as are necessary to optimize the economic utilization of mechanization and labor saving equipment with the potential of reducing operating-differential subsidy (ODS). Other nonstandard equipment or shipbuilding components shall be eligible for CDS, only if (a) their effect is to decrease the total sum of such CDS and ODS projected over the life of a ship, or (b) when it can be demonstrated with reasonable certainty that the added investment will produce a return to the owner of at least 10 percent per annum after taxes over the life of the investment.

3. Value engineering provisions will be included in all construction-differential subsidy contracts and construction contracts. Value engineering items considered mandatory by the Board prior to or during the development of the bidding plans and specifications and during the actual ship construction period shall be incorporated in the plans and specifications or incorporated in the ship. If the mandatory items are not acceptable to the owner the difference in cost, as determined by the Board, between the value engineered and the installed item will be borne by the owner. This paragraph shall not be construed (a) as revising the present appeal rights of the shipowner, or (b) as imposing upon the shipbuilding contractor any requirement for employment of a specific number of value engineering personnel.

4. Subsidy for changes under the construction contract will be allowed only when the net effect of the change will with reasonable certainty (a) comply with the standard in 2 (a) or (b) above, (b) correct a deficiency in

design which is clearly essential, or (c) comply with a change in the requirement of a regulatory body which becomes effective after 30 days preceding bid opening. Any changes desired by the owner which do not adversely affect the safe, efficient or economical operation of the ship will be permitted, but without the benefit of subsidy. Subsidy for changes under category 2(b) shall be based on an estimate as to what the work would have cost if it had been included in the bidding specifications.

5. Post-contract engineering costs incurred by the owner for engineering review and plan approval will be subsidized within a ceiling. The owner's expenses for such engineering and plan approval shall be limited for subsidy purposes to a maximum of 2 percent of the low bid for each of one ship in each contract. This limitation shall apply to liner cargo vessels of the break bulk type with no more than twelve passengers, but including special features such as mechanization, container carrying devices, special cargo handling equipment, refrigeration spaces and special deep tanks, etc. This upper limit shall be adjusted downward to take into account features including, but not limited to, standardized design, successive flights of ships in the same yard, or successive flights of ships in different yards.

6. Construction-differential subsidy on owner's engineering expenses for inspection when only one ship is being built shall be limited to an amount equal to 1.3 percent of the bid price. For multiple ship construction the amount subsidizable will be 1.3 percent of the contract price per ship plus an additional increment of 0.36 percent for each vessel beyond the first. For example, the subsidizable amount for inspection on a four ship contract would be 1.3 percent plus 1.08 percent ( $0.36 \times 3$ ) or 2.38 percent times the cost of the each of four ship bid price.

This limitation shall apply to liner type cargo vessels of the break bulk type with no more than 12 passengers but including special features such as mechanization, container carrying devices, special cargo handling equipment, refrigeration spaces and special deep tanks, etc. This upper limitation shall be adjusted downward to take into account features including, but not limited to, standardized design, or other vessels for the same owner and in the same shipyard.

7. Interior decorators' fees will be limited to a maximum of \$10,000 per contract.

8. Construction-differential subsidy will not apply to owner furnished equipment. All material or equipment to which construction-differential subsidy shall apply must be included in the plans and specifications upon which the competitive ship construction bids are based or included in authorized changes under contract.

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9. Notwithstanding any of the foregoing limitations on subsidy the Board will in exceptional cases authorize subsidy or research and development grants for new ship concepts or individual ship features whose economic justification lie in the possibility of future major advances in ship construction or operation and which in the Board's judgment may lead to greater efficiency and economy.

### APPENDIX NO. 2—STATEMENT OF GENERAL POLICY

1. The appropriations available for the payment of construction-differential subsidy by the Maritime Subsidy Board necessarily are limited. Present replacement program schedules for individual operators repeatedly have been revised and extended in recent years in accordance with the operating-differential subsidy contracts. It is possible that further delay will occur in the replacement of some of the vessels required to be replaced pursuant to the existing contractual obligations of those operators under operating-differential subsidy contracts with the Government. These standards are designed to provide better guidance for the operators and the Government in making the judgments necessary in selecting from among competing applications for limited funds. This policy will apply to requests for and allocations of appropriations for fiscal year 1967 and thereafter. It furthermore applies only to awards of financial assistance in the construction of vessels for liner service.

2. (a) To provide for the optimum development of the American Merchant Marine in number of vessels and in shipping capability, the Board will allocate federal financial assistance for construction or reconstruction of vessels so as to give priority to those proposals which, having met all requirements of Title V, Merchant Marine Act, 1936, will in the Board's opinion utilize such assistance to obtain the greatest shipping capability and productivity possible. In making its determinations under this policy, the Maritime Subsidy Board will take into consideration the following factors:

(1) Number of vessels proposed for construction by the applicant.

(2) Cubic and deadweight capacities and speed of the proposed vessels.

(3) Proposed cargo handling equipment and techniques for transfer of cargo in and out of vessels and to and from inland points. In this connection, the applicant will be required to set forth the estimated rate of loading and of discharge of cargo, as well as the adaptability of the proposed vessel to integrated systems of transportation embracing both ocean and overland transportation.

(4) Estimated domestic cost of construction.

(5) Estimated revenues and cost of operation; and with respect to wage cost, the pro-

posed manning schedule on the proposed vessels.

(6) The applicant's intention to seek operating subsidy and if so, the duration and amount of such subsidy payments.

The Board will weigh the above factors in such a fashion as will measure the productivity of the vessel (i.e., its carrying capacity, speed, and rate of cargo handling) against the Government's cost of construction and operating aid. The Board will award aid (so far as funds are available) for the construction of those vessels otherwise eligible, as will give the greatest productivity for each dollar of Government aid.

(b) The Board reserves for determination at a later time standards to be applied in the allocation of federal financial assistance for the construction of vessels to be used in non-liner operations.

### APPENDIX NO. 3—CONSTRUCTION-DIFFERENTIAL SUBSIDY FOR MACHINERY AND ELECTRIC PLANT SPARE PARTS

1. The total cost of machinery and electric plant spare parts (whether shore-based or carried aboard ship), which are in addition to those spare parts required by all cognizant regulatory bodies (including ABS, Coast Guard and the FCC), which shall be eligible for CDS, shall not exceed the amount determined by application of the percentages shown in the Table below:

2. TABLE 2—COST OF ADDITIONAL SPARE PARTS ELIGIBLE FOR CDS  
[Footnotes at end of table]

Cost class	Type of equipment covered <sup>2</sup>	Cost of spare parts <sup>1</sup>
12 .....	Galley, pantry, and utility space equipment .....	1.0
15 .....	Ventilation and heating .....	2.0
17 .....	Air-conditioning machinery .....	3.0
18 .....	Hull piping (engineering) .....	2.0
19 .....	Cargo oil system .....	2.0
20 .....	Hull piping (domestic) .....	2.0
21 .....	Deck machinery .....	8.0
22 .....	Electric generation and distribution .....	5.0
23 .....	Electronics .....	5.0
25 .....	Main engine .....	3.0
26 .....	Shafting and propellers .....	6.0
27 .....	Condensers .....	1.0
28 .....	Boilers .....	1.0
29 .....	Fuel oil service piping .....	4.0
30 .....	Steam piping .....	4.0
31 .....	Feed, condensate, circulating, and drain piping .....	4.0
32 .....	Lube oil piping .....	4.0
33 .....	Salt water evaporator system .....	7.0
34 .....	Feed heaters and other heat exchangers .....	3.0
35 .....	Pumps .....	13.0
36 .....	Miscellaneous auxiliaries .....	7.0
39 .....	Instruments and gauges .....	15.0
40 .....	Engineers workshop .....	1.0

<sup>1</sup> Expressed as percentage of base cost of the equipment in each cost class.

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<sup>2</sup>Cost of spare anchor, propeller, or tailshaft is not included in this allowance and is handled as a separate Maritime Subsidy Board action.

3. This regulation shall be implemented in accordance with the following procedures and guidelines:

(a) The allowance is to be calculated by the Maritime Administration and will be included in the contract price for all new contracts for which CDS is awarded after this regulation becomes effective. For ships under contract on the effective date of this regulation, the regulation shall form the basis for permitting a change under contract for additional spare parts to be subsidized, provided that a request for CDS participation is submitted to the Maritime Administration prior to delivery of the applicable ship.

(b) The allowance is to be fixed and will not be escalated under the escalation provisions (if any), of the contract. For changes to existing contracts, the allowance will be computed based on the original contract price.

(c) An audit, as deemed appropriate by the Maritime Administration, will be made at the end of the contract to determine total spare parts expenditures and a change under contract will be issued if actual expenditures are less than the allowance. The audit will be based on Maritime Administration review of a priced list, by shipyard purchase orders, of spare parts furnished pursuant to this § 251.11.

(d) Shipping and shipyard handling costs are to be included in the allowance.

(e) If the cost of material in a cost class is increased or decreased by reason of a change under contract, the total spare parts allowance will not be increased or decreased unless included as part of the change under contract.

(f) The actual expenditure of funds for spare parts by the Owner need not correspond to the percentages shown in the table which are used to determine the total amount eligible for CDS.

(g) An owner may exceed the limit set by this regulation, provided such excess is for his sole account.

(Approved by the Office of Management and Budget under control number 2133-0020)

(Reorganization Plans No. 21 of 1950 (64 Stat. 1273) and No. 7 of 1961 (75 Stat. 840), as amended by Pub. L. 91-469 (84 Stat. 1036); and Department of Commerce Organization Order 10-8 (38 FR 19707, July 23, 1973))

[G.O. 11, 2 FR 2205, Sept. 22, 1937, as amended by Amdt. 1, 24 FR 7832, Sept. 29, 1959; 30 FR 11756, Sept. 15, 1965; 30 FR 14598, Nov. 24, 1965; 43 FR 1622, Jan. 11, 1978; 47 FR 25530, June 14, 1982]

## 46 CFR Ch. II (10-1-04 Edition)

### § 251.11 Applications under Title VI, Merchant Marine Act, 1936, as amended.

(a) Applications under title VI of the Act for subsidy to aid in the operation of vessels in the foreign commerce of the United States shall be filed on Form MA-632 in accordance with the instructions annexed thereto.

(b) Copies of Form MA-632 may be obtained on request from the Secretary, Maritime Subsidy Board, Washington, D.C., 20590.

(Approved by the Office of Management and Budget under control number 2133-0017)

[G.O. 13, Rev., 36 FR 11033, June 8, 1971, as amended at 47 FR 25530, June 14, 1982]

### § 251.21 Applications under sections 803, 804, 805 (a) and (d), and 605 (b), Merchant Marine Act, 1936.

Form VI-B of instructions is the required form for the preparation of applications under sections 803, 804, 805(a) (see procedure for 805(a) applications covered in part 380 of this chapter (General Order 86)) and (d), and 605(b), Merchant Marine Act, 1936 (49 Stat. 2012, 2013, 2003; 46 U.S.C. Sup., 1221-1223 (a), (d), 1175(b)).<sup>1</sup> All applicants for operating differential subsidies who file such applications are required to comply therewith.

[G.O. 14, 2 FR 2295, Sept. 28, 1937, as amended at 23 FR 7538, Sept. 27, 1958]

### § 251.31 Charges for processing applications for authorization to transfer ownership of ships built with construction-differential subsidy.

(a) Applications for an amendment or addendum to construction-differential subsidy contracts to provide for the sale of a vessel built under Title V, Merchant Marine Act, 1936, as amended, to a buyer who assumes the obligations under said contracts, shall be filed with the Secretary, Maritime Subsidy Board, Washington, DC 20590.

(b) *Fee.* Each such application shall be accompanied by the sum of \$200,

<sup>1</sup>Copies of form referred to may be obtained from the Secretary, Maritime Subsidy Board, Washington, D.C.

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which sum will be retained to recover the cost of processing the application.

(Sec. 4; 5 U.S.C. 553)

[G.O. 106, 31 FR 3397, Mar. 4, 1966]

### PART 252—OPERATING-DIFFERENTIAL SUBSIDY FOR BULK CARGO VESSELS ENGAGED IN WORLD-WIDE SERVICES

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252.42 Appeals procedures.

AUTHORITY: 46 app. U.S.C. 1114(b), 1117, 1121, 1171, 1172, 1173, and 1175; 49 CFR 1.66.

SOURCE: 40 FR 43490, Sept. 22, 1975, unless otherwise noted.

#### Subpart A—Introduction

##### § 252.1 Purpose.

This part prescribes regulations implementing provisions in Title VI of the Merchant Marine Act, 1936, as amended (46 App. U.S.C. 1171-1176 and 1178-1181) governing operating-differen-

tial subsidy for bulk cargo vessels engaged in carrying bulk cargo in essential services in the foreign commerce of the United States.

[51 FR 40425, Nov. 7, 1986, as amended at 61 FR 32706, June 25, 1996]

##### § 252.2 Policy.

The policy of the Merchant Marine Act, 1936, as amended, is set forth in section 101 thereof, as follows:

It is necessary for the national defense and development of its foreign and domestic commerce that the United States shall have a merchant marine (a) sufficient to carry its domestic water-borne commerce and a substantial portion of the water-borne export and import foreign commerce of the United States and to provide shipping service essential for maintaining the flow of such domestic and foreign water-borne commerce at all times, (b) capable of serving as a naval and military auxiliary in time of war or national emergency, (c) owned and operated under the United States flag by citizens of the United States insofar as may be practicable, (d) composed of the best-equipped, safest, and most suitable types of vessels, constructed in the United States and manned with a trained and efficient citizen personnel, and (e) supplemented by efficient facilities for shipbuilding and ship repair. It is hereby declared to be the policy of the United States to foster the development and encourage the maintenance of such a merchant marine.

##### § 252.3 Definitions.

When used in this part:

(a) *Act* means the Merchant Marine Act, 1936, as amended (46 U.S.C. 1101-1294).

(b) *Maritime Administrator* means the Maritime Administrator, Department of Transportation of the Department of Transportation.

(c) *Board* means the Maritime Subsidy Board of the Maritime Administration.

(d) *Bulk cargo vessel* means a vessel built to carry solid, liquid or gaseous commodities that in normal shipment are contained only by the vessel's structure.

(e) *Citizen of the United States* includes a corporation, if all directors of the corporation are citizens of the United States, partnership or association but only if it is deemed a citizen of the United States under section 2 of the Shipping Act, 1916, as amended (46 U.S.C. 802).